

1                               BEFORE THE DEPARTMENT OF NATURAL RESOURCES

2  
3                               A Public Hearing to Take Comment )  
4                               on a Department of Natural                               )  
5                               Resources Study Concerning the                               )  
6                               Use of Hydrologically Connected                               )  
7                               Ground Water and Surface Water                               )                               TRANSCRIPT  
8                               in the North Platte Natural                               )                               (Pages 1 to 14, incl.)  
9                               Resources District; and on                               )                               EXHIBITS 1 - 3  
10                               whether a Joint Action Manage-                               )  
11                               ment Plan should be Prepared.                               )  
12                               \_\_\_\_\_)

13   The Hampton Inn  
14   Black Mesa Conference Room  
15   Highway 26 & Avenue "I"  
16   Scottsbluff, Nebraska

17                               Convened, pursuant to notice, at 2:00 p.m., on  
18                               March 18, 2004,

19                               BEFORE:

20   ANN S. BLEED, Natural Resources Deputy Director ,  
21   Hearing Officer.

22   - - -

23                               ALSO PRESENT:

24   TINA KURTZ, Natural Resources Specialist II;  
25   JENNIFER SCHELLPEPER, Natural Resources Specialist  
26   III; and TOM HAYDEN, Natural Resources  
27   Specialist IV; STEVE GAUL, Natural Resources  
28   Division Head of Planning and Assistance.

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<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Ruled On</u>	<u>Found</u>
1 DNR Study of Hydrologically Connected Ground Water and Surface Water in the North Platte NRD (137 pages)	4		N/O	Appendix
2 Letter from Neil Gatch (2 pages)	7		N/O	Appendix
3 Testimony of The Central Nebraska Public Power and Irrigation District (2 pages)	7		N/O	Appendix

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## 1 REPORTER'S CERTIFICATE:

2 State of Nebraska )  
3 ) ss.  
4 County of Lancaster )

5 I, CAROLYN S. FREEMAN, reporter for GENERAL  
6 REPORTING SERVICE, certify that I reported the proceedings  
7 in this matter; and that the transcript of testimony is a  
8 true, accurate and complete extension of the recording made  
9 of those proceedings; and further, that the disposition of  
10 the exhibits is referenced in the index, hereto.

11 IN TESTIMONY WHEREOF, I have hereunto set my hand  
12 at Lincoln, Nebraska, this \_\_\_\_\_ day of March, 2004.

13 \_\_\_\_\_  
14 Reporter

15 - - -

1 PROCEEDINGS:

2 THE HEARING OFFICER: Hello, it's 2:00 p.m.,  
3 Mountain Standard Time, March 18th. And this is a hearing  
4 on a report of preliminary findings from a study of  
5 hydrologically connected ground water and surface water and  
6 its contribution to conflicts between ground water users and  
7 surface water appropriators in the North Platte Natural  
8 Resources District. The report was by the Department of  
9 Natural Resources, issued February, 2004.

10 My name is Ann Bleed; I'm the Deputy Director of  
11 the Department of Natural Resources, and I will be the  
12 hearing officer for this hearing. To my left is Carolyn  
13 Freeman, the court reporter. She will be making a verbatim  
14 record of this hearing. To my right is Jennifer  
15 Schellpeper, who will be presenting the report. Also with  
16 me today from the Department of Natural Resources is Tina  
17 Kurtz and Steve Gaul and Tom Hayden, from the Bridgeport  
18 office.

19 We are here today to hear your comments on the  
20 Department of Natural Resources Report. This is a public  
21 hearing, not an evidentiary hearing. So those testifying  
22 will not be required to be sworn in. If you haven't already  
23 signed the sheet that is outside the door, recording your  
24 presence at the hearing, I would request that you do so.

25 To start the hearing, the -- Jennifer Schellpeper

1 will provide a brief summary of the report. Jennifer?

2 MS. SCHELLPEPER: Thank you, Ann. Would you take  
3 judicial (sic) notice of the Report on the North Platte  
4 Natural Resources District?

5 THE HEARING OFFICER: Yes, I will. I will take  
6 judicial (sic) notice.

7 MS. SCHELLPEPER: This is a brief description of  
8 what is in the report. In 1996, the Nebraska Legislature  
9 passed Nebraska Revised Statute 46-656.28, otherwise known  
10 as LB 108, and that allowed the Natural Resource Districts  
11 to consider whether it is necessary to adopt a management  
12 area for integrated management of hydrologically connected  
13 ground water and surface water.

14 On September 5th, 2002, the North Platte NRD sent  
15 a letter requesting that the Department of Natural Resources  
16 begin the studies and the hearing process, provided for in  
17 the statute. And pursuant to the statute, the Department  
18 made a preliminary determination that there was reason to  
19 believe that the use of the hydrologically connected ground  
20 water and surface water resources is contributing to or is  
21 in the reasonably-foreseeable future, likely to contribute  
22 to disputes between ground water users and surface water  
23 appropriators.

24 The study looked at geology, topography, water  
25 table contours, hydraulic conductivity, the number and

1 amount of surface water diversions, numbers of ground water  
2 wells, various records of precipitation, surface water flow,  
3 and ground water levels and other factors affecting the  
4 hydrologic system of the North Platte Natural Resources  
5 District.

6 Based upon these factors, the Department found the  
7 North Platte River, in the district, to be over-appropriated  
8 since 1993, and that no new surface water rights have been  
9 issued since that time. Since 1993, the numbers of ground  
10 water wells have increased. Additionally, over time, annual  
11 precipitation has remained steady; various monitoring wells  
12 have shown ground water level declines and tributary flows  
13 have decreased. Also, the aquifers of the North Platte  
14 Natural Resource District are in hydrologic connection with  
15 the North Platte River and its tributaries.

16 Based on this study, the Department concludes that  
17 present and future conflicts between surface water  
18 appropriators and ground water users, arising out of the use  
19 of the hydrologically connected ground water and surface  
20 water in the North Platte Natural Resources District, can be  
21 eliminated or reduced through the adoption of a joint action  
22 plan.

23 THE HEARING OFFICER: Thank you, Jennifer. Is  
24 that review the subject of the report you just handed to me?

25 MS. SCHELLPEPER: Yes, it is.

1 THE HEARING OFFICER: And is that report available  
2 to the public?

3 MS. SCHELLPEPER: Yes, it is.

4 (Exhibit No. 1 was marked for identification. See  
5 Index.)

6 THE HEARING OFFICER: Thank you. At this time,  
7 I'd like to invite anybody in the audience, who would like  
8 to provide testimony, to take your turn at the microphone.  
9 When you come forward, would you please speak into the  
10 microphone on the table, as well as into the smaller  
11 microphone. The microphone on the table is for the court  
12 reporter. The smaller microphone will allow the people  
13 behind you to hear your testimony.

14 When you come forward, would you please state your  
15 name and spell it for the court reporter and also tell who,  
16 if anybody, you are representing, if you're representing  
17 someone other than yourself. And I would invite anybody  
18 who'd like to provide testimony to come forward. Don't be  
19 shy.

20 DENNIS STRAUCH

21 MR. STRAUCH: My name is Dennis Strauch,  
22 D-e-n-n-i-s, first name; last name, S-t-r-a-u-c-h. I work  
23 as a manager for Pathfinder Irrigation District. I'm not  
24 here on behalf of the district; I'm here on behalf of  
25 myself. Basically, my comments are in support of the

1 findings of the Department, that the use of hydrologically  
2 connected ground water is contributing to conflicts between  
3 surface water end users -- appropriators and ground water  
4 users.

5 I've heard many comments from people in the valley  
6 that the current drought is the cause for such conflicts  
7 between appropriators and ground water users. While the  
8 drought has magnified such conflicts, it's certainly not the  
9 only cause contributing to the current conflicts. DNR, in  
10 their report of findings, attempts to eliminate the impact  
11 of the current drought, by utilizing the statistical  
12 analysis of the period of record, prior to the current  
13 drought. DNR's analysis compared two time periods, 1971  
14 through 1982 and 1993 through 2001, for which the  
15 statistical tests show no significant differences in the  
16 hydrologic conditions as far as canal diversions and  
17 precipitation.

18 Canal diversions and precipitation are the two  
19 major factors that provide tributary return flows, for which  
20 downstream surface water appropriators are dependent upon  
21 for their irrigation supply. Comparing the same time  
22 periods do, however, show significant increases in the  
23 number of depletive wells. DNR's statistical analysis of  
24 tributary flows clearly shows a decline in flows between the  
25 two time periods. This decline is something many of us in



1 the surface water community have been noticing for some  
2 time, without the use of a statistical analysis.

3 Utilizing the Bureau of Reclamations 2000 compiled  
4 water records for the five drain diversions into the Tri-  
5 State Canal, one can see a 29 percent decline in flow. This  
6 decline occurs when comparing the average diversions, during  
7 the 1980 to 1988 time period, to the diversions during the  
8 1993 to 2000 time period. And those -- These two time  
9 periods basically eliminate the drought period of 1989  
10 through 1992, taking that out of consideration.

11 Therefore, we agree with DNR's findings, that the  
12 use of hydrologically connected ground water is contributing  
13 to conflicts between ground water users and surface water  
14 appropriators. We further believe that the preparation and  
15 implementation of a joint action plan will help to alleviate  
16 such conflicts. Thank you.

17 THE HEARING OFFICER: Is there anybody else who  
18 would like to testify?

19 NEIL GATCH

20 MR. GATCH: My name is Neil Gatch. I own a farm  
21 south of Melbeta; we have both surface and ground water.

22 THE HEARING OFFICER: Neil, would you please spell  
23 your last name?

24 MR. GATCH: G-a-t-c-h.

25 THE HEARING OFFICER: And your first name?

1 MR. GATCH: Neil, N-e-i-l.

2 THE HEARING OFFICER: Thank you.

3 MR. GATCH: It is my belief that all irrigation  
4 water, underground and surface, should be treated alike.  
5 All appropriations should have one date. This would include  
6 cities, fish, birds and so forth. If we have, at the  
7 beginning of the year, 75 percent of our water available,  
8 everybody would get 75 percent. This isn't going over well  
9 with Eastern Nebraska, I'm sure, who still feel like they're  
10 first in time (sic), and the birds and the fish have  
11 replaced them in first.

12 Eastern Nebraska is looking west for more water  
13 for expanded manufacturing and so forth. They get a lot  
14 more rain than we do. The birds and fish are now Number  
15 One. If we do nothing now, they will keep nicking at our  
16 water supply until they have it all. That will even affect  
17 the cities as they try to get more water and won't let them  
18 expand. I thank you for letting me talk.

19 (Exhibit No. 2 was marked for identification. See  
20 Index.)

21 THE HEARING OFFICER: Thank you, Neil. Anybody  
22 else wish to testify?

23 (Exhibit No. 3 was marked for identification. See  
24 Index.)

25 DON KRAUS

1                   MR. KRAUS: My name is Don Kraus, K-r-a-u-s,  
2                   General Manager of the Central Nebraska Public Power and  
3                   Irrigation District. The Central Nebraska Public Power and  
4                   Irrigation District supports the preparation of a joint  
5                   action plan for the integrated management of surface water  
6                   and ground water by the Department of Natural Resources and  
7                   the North Platte Natural Resources District.

8                   Central, generally, concurs with the basic  
9                   conclusions reached in the Department's "Report of  
10                  Preliminary Findings," dated February 2004, these  
11                  conclusions being that the North Platte River and its  
12                  tributaries are over-appropriated; that the ground water and  
13                  surface water systems in the North Platte NRD are  
14                  hydrologically connected; that the use of hydrologically  
15                  connected ground water causes depletions to stream flow, and  
16                  that these depletions cause conflict between water users.

17                  The North Platte River and its tributaries have  
18                  long been over-appropriated. The Report's reference to a  
19                  Department moratorium on new surface water permits, since  
20                  1993, is just one example of the recognition of the over-  
21                  appropriated state of the river, though the 1993 date is not  
22                  representative of when the basin first became over-  
23                  appropriated. Conflicts between Nebraska appropriators, the  
24                  need to construct major storage reservoirs for lack of  
25                  adequate direct-flow supply, the Nebraska v. Wyoming lawsuit

1 over North Platte River water use, and the relative  
2 frequency and priority dates of Department regulation for  
3 senior appropriators are other equally valuable examples of  
4 the extent to which the basin is, and has been, over-  
5 appropriated. As early as 1929, State Engineer, R.H.  
6 Willis, stated that, "Practically all of the normal flow of  
7 the stream, in which Nebraska is concerned, is over-  
8 appropriated to a more-or-less degree." In the original  
9 Nebraska v. Wyoming case, before the U.S. Supreme Court, the  
10 special master specifically found that the North Platte  
11 River was already over-appropriated at that time.

12 While the preliminary findings of the Director  
13 acknowledge that the impacts of stream flow depletion  
14 extends to water users located downstream from the North  
15 Platte NRD, the main body of the report seems to focus,  
16 almost exclusively, on impacts to appropriators within the  
17 North Platte NRD, with only brief references to impacts  
18 downstream. However, the impacts of downstream water users  
19 are of equal concern. There are numerous water users  
20 located downstream from the North Platte NRD that rely on,  
21 and have substantial expectations and rights to, stream flow  
22 that originates upstream.

23 At the time of the original Nebraska v. Wyoming  
24 litigation, serious consideration was given to providing a  
25 part of the allocation to Nebraska users located further

1 downstream. The special master ultimately decided that such  
2 an allocation would be unnecessary, based on the expectation  
3 that those downstream users would receive return flows from  
4 the upstream projects, and that the downstream users would  
5 be able to store non-irrigation flows in the newly-  
6 constructed Kingsley Reservoir, now commonly known as Lake  
7 McConaughy.

8 Today, both of these sources of water are being  
9 impacted by hydrologically connected ground water wells in  
10 the North Platte NRD. Central believes that any joint  
11 action plan should give equal consideration and protection  
12 to surface water interests downstream from the North Platte  
13 NRD, as is given to those located with the North Platte NRD.

14 In summary, Central believes that the North Platte  
15 River basin has long been over-appropriated. Central  
16 concurs with the findings in the Department's report, that  
17 the use of hydrologically connected ground water impacts  
18 upon and creates conflicts with surface water users.  
19 Central supports the development of a joint action plan by  
20 the Department and the North Platte NRD, and Central hopes  
21 that the Depart- -- the process will provide some level of  
22 protection and relief to water users located downstream from  
23 the North Platte NRD.

24 THE HEARING OFFICER: Thank you. Excuse me, Don,  
25 were you representing the Central Nebraska Board?

1                   MR. KRAUS: Central, yes, testifying on behalf of  
2 the Central Nebraska Public Power.

3                                   AL HEUTON

4                   MR. HEUTON: My name is Al Heuton, A-l  
5 H-e-u-t-o-n, representing the Panhandle Area Development  
6 District, and just have a couple of quick comments. Number  
7 one, I want to go on record as supporting the findings of  
8 the report, that a conflict does exist, that the situation  
9 does need to be studied and that corrective action does need  
10 to take place. I do think that if it is not present in the  
11 report, that it would be beneficial to include data that  
12 would demonstrate where the increase in water usage, by  
13 water user type, has occurred, rather than just the number  
14 of wells, but focusing on volume as well.

15                   I would also like to indicate that we support the  
16 need for joint action planning, something that's very  
17 important to the future of the economy of this region. And  
18 in that process of action planning, would like to encourage  
19 that some study or time be given to looking at the future of  
20 Nebraska, particularly western Nebraska, what its  
21 development opportunities are, both within agriculture,  
22 alternative types of agriculture, and industrial uses, and  
23 how that may impact the future of water use in this region,  
24 and that the study not just focus on how it's being used  
25 today, and by whom.

1                   And would also like to ask that if there's a  
2                   possibility that there'd be more equality, in terms of  
3                   representation in the stakeholder group from this region, to  
4                   study that. Thank you.

5                   THE HEARING OFFICER: Thank you. Anybody else?

6                   RICK PRESTON

7                   MR. PRESTON: You want me to hold this, I guess.  
8                   My name is Rick Preston, P-r-e-s-t-o-n. I'm General Manager  
9                   with the Gering-Fort Laramie Irrigation District. First of  
10                  all, I'd like to commend the NRD.

11                  THE HEARING OFFICER: Excuse me, Rick, are you  
12                  representing the Board, or yourself?

13                  MR. PRESTON: The Board.

14                  THE HEARING OFFICER: Thank you.

15                  MR. PRESTON: I'd like to commend the NRD and the  
16                  State for recognizing that there is potential conflict or  
17                  conflict in this area, and the efforts that they have taken  
18                  to address it. I'm in support of the steps taken to bring  
19                  the water in this valley all together as one water source  
20                  and supply. With all the studies that have been done, it is  
21                  clear that the surface water and ground water in this valley  
22                  are conjunctively tied. Without the action plan, I believe  
23                  we will not see an end to the continued depletions to the  
24                  streams, from western Nebraska down into the Lewellen area  
25                  and further on down.

1           I would encourage that all involved would continue  
2           in this process and that we can come to grips with these  
3           issues. With that, I concur with my colleagues and their  
4           position and go from there.

5           THE HEARING OFFICER: Thank you. Anybody else?

6                     DENNIS MILLER, JR.

7           MR. MILLER: Dennis Miller, Jr., from Lewellen.  
8           Miller, M-i-l-l-e-r, Dennis, D-e-n-n-i-s. I -- representing  
9           myself. And I also would like to thank everyone for the  
10          work that's been done and to speak in support of the report  
11          as it's written, and to state that I'm in favor of an  
12          integrated management plan. The one thing that I did want  
13          to bring up that's additional is that in a management plan,  
14          which if -- and I'm assuming that it will -- recognize the  
15          flows that are downstream of the North Platte NRD, that in  
16          doing that, that we also remember the historic gaining  
17          stream flows from below Lake McConaughy and that that be  
18          taken into consideration. Thank you.

19          THE HEARING OFFICER: Is there anybody else who  
20          would like to testify?

21                     PAUL LESEBERG

22          MR. LESEBERG: My name is Paul Leseberg,  
23          L-e-s-e-b-e-r-g. I've been a representative on the  
24          stakeholders board with -- representing municipalities in  
25          the area, but today I'm speaking for myself. I also want to



1 put my vote of thanks in to the NRD and to the Department of  
2 Natural Resources. And I agree that the joint-use plan has  
3 to be done.

4 The one thing that hasn't been mentioned today is,  
5 we've been talking about the quantity of water and who uses  
6 that quantity. The other side of the question for  
7 municipalities is the quality of the water. Almost every  
8 town in the North Platte River Valley has some sort of water  
9 quality issue. Many of the cities are under administrative  
10 orders already, and I don't think that we can do any sort of  
11 plan without taking municipalities into consideration. Most  
12 of the smaller towns in the area are agriculturally-based,  
13 so we need to have water for the farmers, whether it comes  
14 from the surface or from ground water. But we also need to  
15 make sure that the water is of high enough quality to  
16 maintain the local populations. And that would also include  
17 the rural users, not just the municipalities. Thank you.

18 THE HEARING OFFICER: Thank you. I'm not seeing  
19 anybody else stepping forward or standing up. So I will  
20 assume there's no one else who would like to provide  
21 testimony?

22 (No response.)

23 And with that, it's about 25 minutes after 2:00,  
24 and I will declare this hearing closed. Thank you all for  
25 coming.